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Attorneys for Defendants  
PASSES, INC. and LUCY GUO

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

FAMOUS BIRTHDAYS, LLC, a  
California limited liability company,

Plaintiff,

v.

PASSES, INC., a Delaware  
corporation; and LUCY GUO, an  
individual,

Defendants.

Case No. 2:24-cv-08364-CBM-SSC

**REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS**

Date: January 14, 2025

Time: 10:00 A.M.

Ctrm.: 8-D

Judge: Hon. Consuelo B. Marshall

Action Filed: September 27, 2024

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 Defendants PASSES, INC., (“Passes”) and LUCY GUO (“Ms. Guo”)  
3 (collectively “Defendants”) respectfully request that, pursuant to Fed. R. Evid. 201  
4 and doctrine of incorporation by reference, in considering Defendants’ Motion to  
5 Dismiss Plaintiff’s Complaint (“Compl.”) (“the Motion”), this Court take judicial  
6 notice of the following documents:

- 7 1. **Exhibit 1** to the concurrently filed Motion is a true and correct certified  
8 copy of each of the deposits for Exs. B and E to the Complaint (Dkt. 1)  
9 obtained from the United States Copyright Office for registration  
10 numbers TXu 2-119-709 and TXu 2-302-694, as lodged with the Court.  
11 These deposits are the underlying works for the registrations pled in  
12 conjunction with Plaintiff’s copyright claim in the Complaint.
- 13 2. **Exhibit 2** to the concurrently filed Motion is a true and correct certified  
14 copy of the deposit for Ex. C to the Complaint obtained from the United  
15 States Copyright Office for registration number TXu 2-282-456, as  
16 lodged with the Court. This deposit is the underlying work for the  
17 above-referenced registration pled in conjunction with Plaintiff’s  
18 copyright claim in the Complaint.
- 19 3. **Exhibit 3** to the concurrently filed Motion is a true and correct certified  
20 copy of the deposit for Ex. D to the Complaint obtained from the United  
21 States Copyright Office for registration number TX 9-082-717, as  
22 lodged with the Court. This deposit is the underlying work for the  
23 above-referenced registration pled in conjunction with Plaintiff’s  
24 copyright claim in the Complaint.
- 25 4. **Exhibit 4** to the concurrently filed Motion are side-by-side comparisons  
26 of full biographies for: Barack Obama, Curtis Jackson (50 Cent), Adam  
27 Levine, Emma Brooks McAllister, Marko Terzo, N3on, and Angel  
28 Reese. On the lefthand side is a true and correct screenshot of the

1 Famous Birthdays’ biographies that Defendants accessed today<sup>1</sup>. On  
2 the right hand side is a true and correct screenshot of the image of  
3 Passes’ biography that Plaintiff included in the Britton Decl. (Dkt. 11-  
4 1), Exs. H, J, L, N, P, R, and T.

5 5. **Exhibit 5** to the concurrently filed Motion is a redline comparison of  
6 the text for each of the following biographies: Barack Obama, Curtis  
7 Jackson (50 Cent), Adam Levine, Emma Brooks McAllister, Marko  
8 Terzo, N3on, and Angel Reese. A Goodwin Procter employee typed the  
9 contents of the Famous Birthdays biography and Passes biography (as  
10 shown in RJN Ex. 4), then ran an automated redline to show differences  
11 between the text of the biographies prepared by each of Famous  
12 Birthdays and Passes. The system results are not perfect in detecting  
13 differences, but it is intended to aid the Court in assessing differences in  
14 the text. The Famous Birthdays biography was used as the “original”  
15 text and the Passes biography was used as the “modified” text.

16 6. **Exhibit 6** to the concurrently filed Motion is Paragraph 7 of the  
17 Declaration of Patrick Zhang, Chief Technology Officer for Defendant  
18 Passes (Dkt. 39-6), demonstrating the fact that the Passes Wiki  
19 biography pages are no longer publicly available.

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 In resolving a motion to dismiss, “courts must consider the complaint in its  
22 entirety,” including (1) documents incorporated by reference, and (2) matters of  
23 which a court may take judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*,  
24 551 U.S. 308, 322 (2007); *see also Curry v. Yelp Inc.*, 875 F.3d 1219, 1224 (9th Cir.  
25 2017).

26  
27 <sup>1</sup> The formatting issues in Britton Decl. (Dkt. 11-1), Exs. G, I, K, M, O, Q, and S  
28 make the biographies difficult to read. For ease of comparison and readability,  
screenshots captured from Famous Birthdays’ public website were instead used in  
the side-by-side comparisons.

1           **Incorporation by reference.** “Under the doctrine of incorporation by  
2 reference,” a court may consider “not only documents attached to the complaint, but  
3 also documents whose contents are alleged therein, provided the complaint  
4 ‘necessarily relies’ on the documents or contents thereof, and the documents’  
5 authenticity and relevance are uncontested.” *Sharp v. Nationstar Mortg., LLC*, 2015  
6 WL 106844, at \*3 (N.D. Cal. Jan. 7, 2015) (quoting *Coto Settlement v. Eisenberg*,  
7 593 F.3d 1031, 1038 (9th Cir. 2010)). A document is “incorporated by reference into  
8 a complaint if the plaintiff refers extensively to the document or the document forms  
9 the basis of the plaintiff’s claim.” *United States v. Ritchie*, 342 F.3d 903, 908 (9th  
10 Cir. 2003). Moreover, where a document has been incorporated by reference, the  
11 Court “may treat such a document as part of the complaint, and thus may assume that  
12 its contents are true for purposes of a motion to dismiss under Rule 12(b)(6).” *Id.* at  
13 908. The purpose of this doctrine is to “prevent plaintiffs from surviving a Rule  
14 12(b)(6) motion by deliberately omitting documents upon which their claims are  
15 based.” *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (alterations and  
16 internal quotations omitted). Lastly, the Court may review and consider under the  
17 incorporation by reference doctrine the entire biographies for the public figures for  
18 which Plaintiff only provided excerpts. *See Knievel v. ESPN*, 393 F.3d 1068, 1076  
19 (9th Cir. 2005).

20           **Judicial notice.** Federal Rule of Evidence 201 requires the Court to “take  
21 judicial notice if a party requests it and the court is supplied with the necessary  
22 information.” Fed. R. Evid. 201(c)(2). The Court may take judicial notice of a fact  
23 that is not subject to reasonable dispute because it can be accurately and readily  
24 determined from sources whose accuracy cannot reasonably be questioned. Fed. R.  
25 Evid. 201(b)(2). A matter that is properly the subject of judicial notice may be  
26 considered along with the complaint when deciding a motion to dismiss for failure to  
27 state a claim. *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.2d 1005, 1016 n.9 (9th  
28 Cir. 2012). Relevant here, this Court may take judicial notice of public records

1 available from government entities. *E.g.*, *Coppes v. Wachovia Mortg. Corp.*, No. 10-  
2 1689, 2010 WL 4483817, at \*2-3 (E.D. Cal. Oct. 29, 2010). Federal Rule of  
3 Evidence 201 also permits this Court to take judicial notice of factual information  
4 found on websites not subject to reasonable dispute and “capable of accurate and  
5 ready determination by resort to sources whose accuracy cannot reasonably be  
6 questioned.” *See e.g.*, *Ebrahimi v. Mentor Worldwide LLC*, 2017 WL 4128976, at  
7 \*1 (C.D. Cal. Sept. 15, 2017) (citing Fed. R. Evid. 201(b)).

## 8 DISCUSSION

### 9 Exhibits 1-3 Are Incorporated by Reference into the Complaint.

10 The Court may take judicial notice of Exhibits 1, 2, and 3 under the  
11 incorporation by reference doctrine. Under this doctrine, courts frequently take  
12 judicial notice of “documents whose contents are alleged in a complaint . . . but which  
13 are not physically attached to the pleading.” *In re Stac Elecs. Sec. Litig.*, 89 F.3d  
14 1399, 1405 n. 4 (9th Cir. 1996). Judicial notice is also appropriate under Federal Rule  
15 of Evidence 201(b)(2), which permits a court to take notice of a fact that is “not  
16 subject to reasonable dispute because it can be accurately and readily determined  
17 from sources whose accuracy cannot reasonably be questioned.” The Court may take  
18 judicial notice of Exhibits 1-3 because they are matters of public record. *See MGIC*  
19 *Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986). Indeed,  
20 “Copyright certificates are the type of documents that the court may judicially notice  
21 under Rule 201(b)(2).” *Warren v. Fox Family Worldwide, Inc.*, 171 F. Supp. 2d 1057,  
22 1062 (C.D. Cal. 2001) (citing *Oroamerica Inc. v. D&W Jewelry Co., Inc.*, 10  
23 Fed.Appx. 516, 517 n.4 (9th Cir. 2001)); *see Newt v. Twentieth Century Fox Film*  
24 *Corp.*, 2016 WL 4059691, \*2–3 (C.D. Cal. July 27, 2016) (taking judicial notice of  
25 relevant copyright registrations and deposit copy of works).

26 Here, Plaintiff alleges that Defendant has “misappropriated [its] copyrighted  
27 Works and other intellectual property,” Compl., ¶6, but only attaches three copyright  
28 registrations and one supplemental registration. Compl., ¶21; *see also* Compl., Exs.

1 B–E. Plaintiff failed to attach the deposits associated with the pled registrations,  
2 which are the works covered by the associated registrations. Courts routinely take  
3 judicial notice of such copyright registration materials because they are not subject  
4 to reasonable dispute. *See Thomas v. Walt Disney Co.*, 337 F. App’x 694, 695 (9th  
5 Cir. 2009).

6 **Exhibits 4-5 Are Incorporated by Reference into the Complaint.**

7 The Court may take judicial notice of Exhibits 4 and 5 under the incorporation  
8 by reference doctrine. The content shown in each exhibit are screenshots from  
9 Plaintiff’s own website [www.famousbirthdays.com](http://www.famousbirthdays.com) or from Defendants’ former  
10 website [www.passes.com/wiki](http://www.passes.com/wiki), which is no longer active. These screenshots were  
11 explicitly referenced in the complaint. *See Britton Decl.*, Exs. G-T to the Motion for  
12 Preliminary Injunction. The screenshots are full biographies for public figures for  
13 which Plaintiff only provided excerpts. The gravamen of Plaintiff’s Complaint is that  
14 Defendants infringed its allegedly copyrighted profiles shown in these screenshots.  
15 Plaintiff replicates this content verbatim from the profile of each person in the  
16 complaint to compare with the content on the Passes’ website to support its claim of  
17 copyright infringement. Therefore, this Court should take judicial notice of each of  
18 these screenshots. *See Ritchie*, 342 F.3d at 908; *see Knievel*, 393 F.3d at 1076.

19 **Exhibit 6 (Dkt. 39-6 ¶7) Is Material Appropriate for Judicial Notice.**

20 The Court may take judicial notice of the fact that the Passes Wiki website is  
21 no longer operational, as stated in paragraph seven of the Declaration of Patrick  
22 Zhang, Chief Technology Officer for Defendant (Dkt. 39-6) because it is not subject  
23 to reasonable dispute and can be readily verified. Federal Rule of Evidence 201(b)(2)  
24 allows a court may take judicial notice of facts that “can be accurately and readily  
25 determined from sources whose accuracy cannot reasonably be questioned.”

26 Here, Defendant’s declaration confirms that the website is currently down and  
27 provides direct evidence of this fact from Google.com. Courts have recognized that  
28 the status of publicly accessible websites is capable of verification and subject to

1 judicial notice when such facts are beyond reasonable dispute.

2 The paragraph in Defendant's declaration does not involve speculative  
3 assertions or opinions; rather, it documents an observable fact—namely, the website  
4 is no longer accessible to the public. Such a fact can also be independently verified  
5 through simple access or queries to the domain, reinforcing its reliability. Because  
6 this information is publicly verifiable and undisputed, it is appropriate for judicial  
7 notice.

8  
9 **CONCLUSION**

10 For the foregoing reasons, Defendants respectfully request that under the  
11 incorporation by reference doctrine and Fed. R. Evid. 201(b)(2) this Court take  
12 judicial notice of Exhibits 1 through 6 in ruling on Defendants' Motion to Dismiss  
13 the Complaint.

14  
15 Dated: December 12, 2024

Respectfully submitted,

16 By: /s/ Neel Chatterjee

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26  
27  
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**LOCAL RULE 11-6.1 CERTIFICATION**

The undersigned counsel of record for Defendants PASSES, INC., (“Passes”) and LUCY GUO (“Ms. Guo”) certifies that this memorandum of points and authorities contains 1,200 words, which complies with the word limit set forth in Local Rule 11-6.1.

/s/ Neel Chatterjee  
NEEL CHATTERJEE



**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Central District of California by using the CM/ECF system on **December 12, 2024**. I further certify that all participants in the case are registered CM/ ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.  
Executed on **December 12, 2024**.

/s/ Neel Chatterjee  
NEEL CHATTERJEE